

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 29, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARNULFO VENEGAS-MENDOZA,

Defendant.

NO: 2:20-CR-10-RMP-1

ORDER DENYING WITHOUT
PREJUDICE DEFENDANT'S
MOTION FOR COMPASSIONATE
RELEASE

BEFORE THE COURT is Defendant's Motion for Compassionate Release to Reduce Custodial Sentence under 18 U.S.C. § 3582(c)(1)(A), ECF No. 43. The Court has reviewed the motion, the record, and is fully informed.

BACKGROUND

On May 19, 2020, Mr. Venegas-Mendoza appeared before the Court via video conference for a Fast Track change of plea and sentencing hearing. ECF No. 38. The Court accepted Mr. Venegas-Mendoza's plea of guilty to the Indictment, ECF No. 17, charging him with being an Alien in the United States after Deportation in violation of 8 U.S.C. § 1326. ECF No. 40. The Court sentenced Mr. Venegas-Mendoza to 37 months imprisonment followed by three (3) years of supervised release. ECF No. 41 at 2–3.

ORDER DENYING WITHOUT PREJUDICE DEFENDANT'S MOTION FOR
COMPASSIONATE RELEASE ~ 1

1 On February 18, 2021, Mr. Venegas-Mendoza filed the present motion for
2 compassionate release. ECF No. 43. At that time, Mr. Venegas-Mendoza was still
3 being held at the Spokane County Jail. *Id.* at 23. While being held at the Spokane
4 County Jail, Mr. Venegas-Mendoza was placed in isolation due to mental health
5 issues. *Id.* at 8–14. He has since been transferred to a Bureau of Prisons (“BOP”)
6 facility. ECF No. 48 at 12. Mr. Venegas-Mendoza is currently housed at Federal
7 Medical Center Devens, a medical grade BOP facility in Massachusetts. *Id.*, ECF
8 No. 43 at 7.

9 DISCUSSION

10 A federal prisoner may move for a sentence reduction and compassionate
11 release on his own behalf “after the defendant has fully exhausted all administrative
12 rights to appeal a failure of the Bureau of Prisons to bring a motion on the
13 defendant’s behalf or the lapse of 30 days from the receipt of such a request by the
14 warden of the defendant’s facility, whichever is earlier.” 18 U.S.C. § 3582(c)(1)(A).

15 When Mr. Venegas-Mendoza moved this Court for compassionate release, he
16 was not in BOP’s custody. ECF No. 43 at 23. Accordingly, Mr. Venegas-Mendoza
17 argued that he was not required to exhaust administrative remedies where no such
18 remedies were available. *Id.* at 23–24; *see also United States v. Gonzalez*, 451 F.
19 Supp. 3d 1194, 1196 (E.D. Wash. 2020) (“The Court finds that Defendant has
20 effectively exhausted her administrative remedies by petitioning the BOP, giving
21

1 them notice, and being told she does not have any other administrative path or
2 remedies she can pursue.”).

3 However, since filing this motion, Mr. Venegas-Mendoza has been transferred
4 to a BOP facility. ECF Nos. 48 at 12, 49. The Government argues that due to this
5 change in circumstance, Mr. Venegas-Mendoza’s motion is not ripe for review for
6 failure to exhaust administrative remedies, and the motion should be denied with
7 leave to renew. *Id.* at 13.

8 Mr. Venegas-Mendoza agrees with the Government’s position that since he has
9 been transported to a BOP medical facility, his request is premature and the motion
10 should be denied without prejudice. ECF No. 50 at 2. After Mr. Venegas-Mendoza
11 is able to evaluate the degree of care provided by Federal Medical Center Devens,
12 Mr. Venegas-Mendoza may renew his request if necessary and after properly
13 exhausting his administrative remedies. ECF No. 50 at 2.

14 Accordingly, **IT IS HEREBY ORDERED** that Defendant’s Motion for
15 Compassionate Release to Reduce Custodial Sentence under 18 U.S.C.
16 § 3582(c)(1)(A), **ECF No. 43**, is **DENIED with leave to renew**.

17 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
18 and provide copies to counsel.

19 **DATED** March 29, 2021.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge